

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBINSON PERALTA,

Plaintiff,

-v-

CITY OF NEW YORK, et al.,

Defendants.

21-CV-6395 (JMF)

ORDER

JESSE M. FURMAN, United States District Judge:

Plaintiff's letter seeking the undersigned's recusal, *see* ECF No. 29 — which the Court will construe as a motion for recusal — is DENIED as frivolous. *See, e.g., Sibley v. Geraci*, 858 F. App'x 415, 417 (2d Cir. 2021) (summary order) (holding that a motion for recusal of the presiding judge was properly denied where the plaintiff had raised only “speculative assertions” and “did not allege, let alone demonstrate, that [the judge] was biased against him nor did he allege any facts suggesting that [the judge's] impartiality could be questioned”); *Mitchell v. Mayorkas*, No. 20-CV-1183 (JLS), 2021 WL 4244327, at *2 (W.D.N.Y. Aug. 24, 2021) (“A district judge's prior decisions adverse to a defendant do not merit recusal.”).

In light of Plaintiff's Amended Complaint, filed on October 18, 2021, *see* ECF No. 12, which names Detectives Salcedo and Witten as defendants, the Clerk of Court is directed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Defendants Salcedo and Witten. The Clerk of Court is further instructed to issue summonses as to Defendants Salcedo and Witten and to deliver to the Marshals Service all paperwork necessary for the Marshals Service to effect service upon those Defendants.¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and Amended Complaint on Defendants Salcedo and Witten until the Court ordered that summonses be issued for those defendants. The Court therefore extends the time to serve Defendants Salcedo and Witten until 90 days from the date of this Order, **May 16, 2022**. If the Amended Complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding

¹ Because Plaintiff has been granted permission to proceed *in forma pauperis* (“IFP”), *see* ECF No. 4, he is entitled to rely on the Court and the U.S. Marshals Service to effect service, *see Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (“The court must . . . order [the U.S. Marshals Service to serve] if the plaintiff is authorized to proceed in forma pauperis . . .”).

that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

The deadline of **March 9, 2022**, for Plaintiff to file any second amended complaint *or* to file any opposition to Defendant New York City's motion to dismiss remains in effect. *See* ECF No. 28. **To be clear, the Court has granted Plaintiff leave (i.e., permission) to file a second amended complaint by that deadline; Plaintiff is not required to do so and may instead choose to file an opposition to Defendant New York City's motion to dismiss the Amended Complaint at any time before March 9, 2022. If Plaintiff does file a second amended complaint, Plaintiff should include all claims against all Defendants and allege all facts in support of those claims.**

As noted, the Clerk of Court is directed to issue summonses as to Defendants Salcedo and Witten, complete the USM-285 forms with the addresses for those defendants (listed below), and deliver all documents necessary to effect service to the U.S. Marshals Service. The Clerk of Court is further directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: February 18, 2022
New York, New York



JESSE M. FURMAN
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

(First Address for Detective Salcedo)

Detective Salcedo

New York City Police Department

1 Police Plaza

New York, NY 10038

(Second Address for Detective Salcedo)

Detective Salcedo

New York City Police Department – 34th Precinct

4295 Broadway

New York, NY 10033

Detective Witten

Detective Badge # 11292

New York City Police Department

1 Police Plaza

New York, NY 10038